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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,340	04/09/2004	Jeffery J. Fencel	C047553/0171507	9987
49328	7590	11/25/2005	EXAMINER	
BRYAN CAVE LLP			PARSLEY, DAVID J	
211 NORTH BROADWAY			ART UNIT	
SUITE 3600			PAPER NUMBER	
ST. LOUIS, MO 63102-2750			3643	

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/821,340	Applicant(s) FENCEL ET AL.	
	Examiner David J. Parsley	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7-16-04</u> . | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it begins with an implied statement.

Correction is required. See MPEP § 608.01(b).

Claim Objections

2. Claim 16 recites the limitation "the body portion" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,092,323 to McBride et al.

Referring to claim 1, McBride et al. discloses a wind activated decoy, which comprises, a mounting post – at 42-66, comprising a support shaft – at 62 and a lateral wing support structure – at 44,52, a body portion – at 14, capable of being attached to the mounting post – see figure 1, wherein the body portion portrays the shape and image of a desired species – see figure 1, and two wing vanes – at 16,20, wherein the wing vanes are connected by a wing shaft – at 18 – see for example figure 1.

Referring to claim 5, McBride et al. discloses the body portion is reversibly attached to the mounting post – see for example at 42 and 58 in figure 6.

Referring to claim 12, McBride et al. discloses a wind activated decoy which comprises, a mounting post – at 42-66, comprising a support shaft – at 62 and a lateral wing support structure – at 44,52, a body portion – at 14,26, comprising a substantially thin rigid, sheet of material – at 26, wherein the body portion is capable of being attached to the mounting post and portrays the shape and image of a desired species – see for example figure 1, and two wing vanes – at 20, wherein the wing vanes are connected by a wing shaft – at 18 – see for example figure 1.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over McBride et al. as applied to claims 1 or 12 above, and further in view of U.S. Patent No. 4,620,385 to Carranza et al. McBride et al. does not disclose each of the wing vanes comprises an approximately sinusoidal curve in cross section for producing aerodynamic rotation thereof when acted upon by the wind. Carranza et al. does disclose each of the wing vanes – at 21, comprises an approximately sinusoidal curve in cross section – see figures 1-3, for producing aerodynamic rotation thereof when acted upon by the wind – see for example figures 1-3 and column 3 lines 46-65. Therefore it would have been obvious to one of ordinary skill in the art to take the device of McBride et al. and add the wings having a sinusoidal curve cross section of Carranza et al. so as to allow for decoy to provide a visual stimulus attractive to live birds.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over McBride et al. as applied to claim 1 above, and further in view of U.S. Patent No. 5,960,577 to Walterson. McBride et al. does not disclose the lateral wing support structure comprises ball bearings disposed therein for rotatably supporting the wing shaft. Walterson does disclose the lateral wing support structure – at 66-84, comprises ball bearings – at 72, disposed therein for rotatably supporting the wing shaft – at 20 and/or 22 or 26 – see for example figure 3 and column 3 lines 29-55. Therefore it would have been obvious to one of ordinary skill in the art to take the device of McBride et al. and add the wing support structure with ball bearings of Walterson, so as to allow for the wings to be securely movably attached to the body of the decoy.

Claim 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over McBride et al. as applied to claim 1 above, and further in view of U.S. Patent No. 5,144,764 to Peterson. McBride et al. does not disclose the body portion pivotally turns upon the support shaft to orient the wing vanes into prevailing wind. Peterson does disclose the body portion – at 10-18, pivotally turns upon the support shaft – at 14,40,42, to orient the wing vanes – at 20, into prevailing wind – see for example column 4 lines 7-24. Therefore it would have been obvious to one of ordinary skill in the art to take the device of McBride et al. and add the body portion pivoting on the support shaft to orient the wings into the wind of Peterson, so as to increase the time that the wings are in motion thus making the decoy more attractive to live birds.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over McBride et al. as applied to claim 1 above, and further in view of U.S. Patent No. 4,928,418 to Stelly. McBride et al. does not disclose the body portion is permanently attached to the mounting post. Stelly does disclose the body portion – at 110, is permanently attached to the mounting post – at 100-104 – see for example figure 3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of McBride et al. and add the body portion permanently attached to the mounting post of Stelly, so as to allow for the mounting post to be securely held to the body portion during use.

Claims 7-8 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over McBride et al. as applied to claim 1 above, and further in view of U.S. Patent No. 6,115,953 to Wise.

Referring to claim 7, McBride et al. does not disclose the image of a desired species is screen printed on the body portion. Wise does disclose the image of a desired species is screen

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printed on the body portion – at 10-13 – see for example column 3 lines 66-67 and column 4 lines 1-11. Therefore it would have been obvious to one of ordinary skill in the art to take the device of McBride et al. and add the image of the species being screen printed on the body of the decoy of Wise, so as to allow for the decoy to resemble the actual visual characteristics of a live bird to make the decoy more attractive to live birds.

Referring to claim 8, McBride et al. as modified by Wise further discloses the image is a photographic rendering of the desired species – see for example column 4 lines 43-67 of Wise.

Referring to claim 10, McBride et al. as modified by Wise further discloses the image is a computer generated rendering of the desired species – see for example column 4 lines 61-67 of Wise.

Referring to claim 11, McBride et al. does not disclose the image of a desired species is adhesively attached to the body portion. Wise does disclose the image of a desired species is adhesively attached to the body portion – see for example column 3 lines 22-65. Therefore it would have been obvious to one of ordinary skill in the art to take the device of McBride et al. and add the image being adhesively attached to the body portion of Wise, so as to allow for the image to be securely held to the body portion.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over McBride et al. as modified by Wise as applied to claim 7 above, and further in view of U.S. Patent No. 4,845,872 to Anderson. McBride et al. as modified by Wise does not disclose the image is a hand-painted rendering of the desired species. Anderson does disclose the image is a hand-painted rendering of the desired species – see for example column 4 lines 8-17. Therefore it would have been obvious to one of ordinary skill in the art to take the device of McBride et al. as modified by

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Wise and add the image is hand painted on the body portion of Anderson, so as to allow for the decoy to resemble the actual visual characteristics of a live bird to make the decoy more attractive to live birds.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over McBride et al. as modified by Carranza et al. as applied to claim 13 above, and further in view of U.S. Patent No. 5,144,764 to Peterson. McBride et al. as modified by Carranza et al. does not disclose the body portion pivotally turns upon the support shaft to orient the wing vanes into prevailing wind. Peterson does disclose the body portion – at 10-18, pivotally turns upon the support shaft – at 14,40,42, to orient the wing vanes – at 20, into prevailing wind – see for example column 4 lines 7-24. Therefore it would have been obvious to one of ordinary skill in the art to take the device of McBride et al. as modified by Carranza et al. and add the body portion pivoting on the support shaft to orient the wings into the wind of Peterson, so as to increase the time that the wings are in motion thus making the decoy more attractive to live birds.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over McBride et al. as modified by Carranza et al. and Peterson as applied to claim 14 above, and further in view of U.S. Patent No. 6,115,953 to Wise. McBride et al. as modified by Carranza et al. and Peterson does not disclose the image of a desired species is screen printed on the body portion. Wise does disclose the image of a desired species is screen printed on the body portion – at 10-13 – see for example column 3 lines 66-67 and column 4 lines 1-11. Therefore it would have been obvious to one of ordinary skill in the art to take the device of McBride et al. as modified by Carranza et al. and Peterson and add the image of the species being screen printed on the body of the decoy of

Wise, so as to allow for the decoy to resemble the actual visual characteristics of a live bird to make the decoy more attractive to live birds.

Claims 16 and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over McBride et al in view of Peterson.

Referring to claim 16, McBride et al. discloses a mounting post for supporting a body portion of a wind activated decoy, which comprises an attachment area – proximate 42 and 50 and in between items 52, which receives the body portion of the decoy – at 14,26, - see for example figures 1 and 6, a support shaft – at 62, and a lateral wing support structure – at 44,52, which is capable of housing a wing shaft – at 18 – see figure 3, upon which at least two wing vanes – at 20, of the decoy rotate – see for example figure 1. McBride et al. does not disclose the decoy is capable of pivoting into a prevailing wind on the support shaft. Peterson does disclose the decoy is capable of pivoting into a prevailing wind on the support shaft – at 40,42 – see for example column 4 lines 7-24. Therefore it would have been obvious to one of ordinary skill in the art to take the device of McBride et al. and add the decoy pivoting on the support shaft to into a prevailing wind of Peterson, so as to increase the time that the wings are in motion thus making the decoy more attractive to live birds.

Referring to claim 18, McBride et al. as modified by Peterson further discloses the body portion is reversibly affixed to the attachment area – see for example at 42 and 58 in figure 6 of McBride et al.

Referring to claim 19, McBride et al. as modified by Peterson further discloses a wing activated decoy kit as seen above referring to claim 16, and a wing shaft – at 18, wherein the

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wing shaft is capable of rotating within the lateral wing support – at 44,52, of the mounting post – see for example figure 3 of McBride et al.

Referring to claim 20, McBride et al. as modified by Peterson further discloses at least two wing vanes – at 20, capable of engaging the wing shaft – at 18 – see for example figure 1 of McBride et al.

Referring to claim 21, McBride et al. as modified by Peterson further discloses the body portion – at 14,26, of the decoy, wherein the body portion – at 14,26, comprises a substantially thin, rigid sheet of material – at 26 or at the portions of item 14 comprising the wing feathers and the tail feathers as seen in figure 2, capable of being attached to the mounting post – at 62, and portrays the shape and image of a desired species – see for example figures 1-2 of McBride et al.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over McBride et al. as modified by Peterson as applied to claim 17 above, and further in view of U.S. Patent No. 4,928,418 to Stelly. McBride et al. as modified by Peterson does not disclose the body portion is permanently attached to the mounting post. Stelly does disclose the body portion – at 110, is permanently attached to the mounting post – at 100-104 – see for example figure 3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of McBride et al. as modified by Peterson and add the body portion permanently attached to the mounting post of Stelly, so as to allow for the mounting post to be securely held to the body portion during use.

Conclusion

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5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to wildfowl decoys in general:

U.S. Pat. No. 2,545,801 to Wrazen – shows decoy with mounting post

U.S. Pat. No. 3,245,168 to Pool – shows decoy with mounting post

U.S. Pat. No. 4,435,913 to Messina – shows mounting post structure

U.S. Pat. No. 5,036,614 to Jackson – shows decoy with mounting post

U.S. Pat. No. 5,392,554 to Farstad et al. – shows decoy with mounting post

U.S. Pat. No. 6,408,559 to Mathews – shows decoy with mounting post

GB Pat. No. 2295953 – shows mounting post

EP Pat. No. 1179296 – shows mounting post

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890.

The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Parsley
Patent Examiner
Art Unit 3643